

6

# C A S E

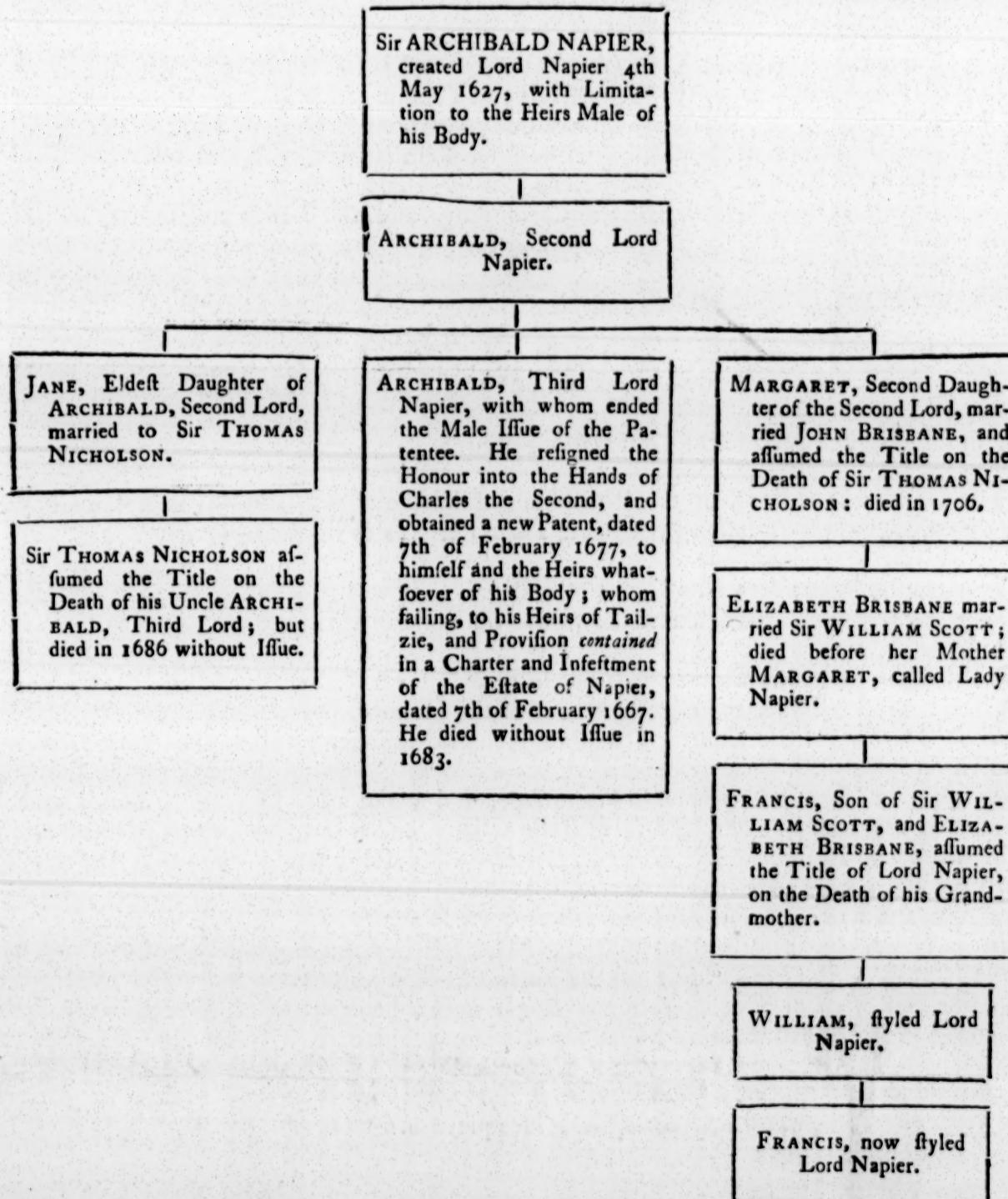
O F

GEORGE MARQUIS of TWEEDDALE, and  
other Peers of *Scotland* who object to the Title of the  
Person who voted at the late Election as

L O R D N A P I E R.

---

P E D I G R E E.



FROM the above Pedigree it appears, That the Person who voted at the late Election by the Title of Lord Napier, does not claim under the original Patent.

To make out his Claim under the second Patent, dated 7th February 1677, he must shew that he is Heir of Tailzie and Provision to Archibald Second Lord Napier, under the Charter and Infeftment mentioned in the Patent, as bearing Date 7th February 1667.

No

No such Charter or Infestment can be discovered on Record, and it is believed that the Claimant will not say that he takes under them.

But it is supposed that the Claimant will attempt to support his Title upon Two Grounds :

1<sup>st</sup>, That the Date of the Charter set forth in the Patent should have been 1677, and not 1667, for that there was a Charter of the Estate passed of the same Date with the Patent of the Honour, *viz.* 7th February 1677—and that is the one meant to be referred to.

It is answered,

1<sup>st</sup>, That to make out the Limitation of an Honour, by alledging Error in the Patent and in the Record, is inadmissible.

2<sup>d</sup>, If the Charter of 7th February 1677 had been the one intended to be referred to, the Words of the Patent would have been “*of equal Date with these Presents.*”

3<sup>d</sup>, The Patent refers not only to a Charter, but to *an Infestment* passed in 1667.—It is impossible, that upon the Charter, bearing Date at *Wbytehall* the 7th of February 1677, there could have been an Infestment the same Day.

The Claimant's second Ground is supposed to be,

That laying aside the *Patent* 1677, he has Right to the Honour by a Royal Charter, which passed the same Day, including both Estate and Honour.

By this Charter, His Majesty King *Charles the Second* is said to have granted to the said *Archibald* (Third) Lord *Napier*, and the Heirs Male and Female of his Body,—whom failing, to *Jean Napier*, his eldest Sister, and the Heirs of her Body,—whom failing, to *Margaret Napier*, his Second Sister, and the Heirs of her Body, with other Limitations, with and under certain Provisions, Restrictions, Conditions, and Limitations, *the Style and Title of Lord Napier*, with all Precedencies, Privileges, and Liberties thereunto belonging, and the Lands and Barony of *Edinbelly*, and other real Estates then belonging to Lord *Napier*.

The Charter bears, That the Estate and Honour were resigned by Lord *Napier* upon the 26th Day of March 1674 (*not* into the Hands of His Majesty, but) into the Hands of the *Lords of the Treasury and Exchequer in Scotland*. *for a new Grant to be made* in the Terms aforesaid.—And the Charter contains a Clause of *Novodamus* of both the Estate and the Honour.

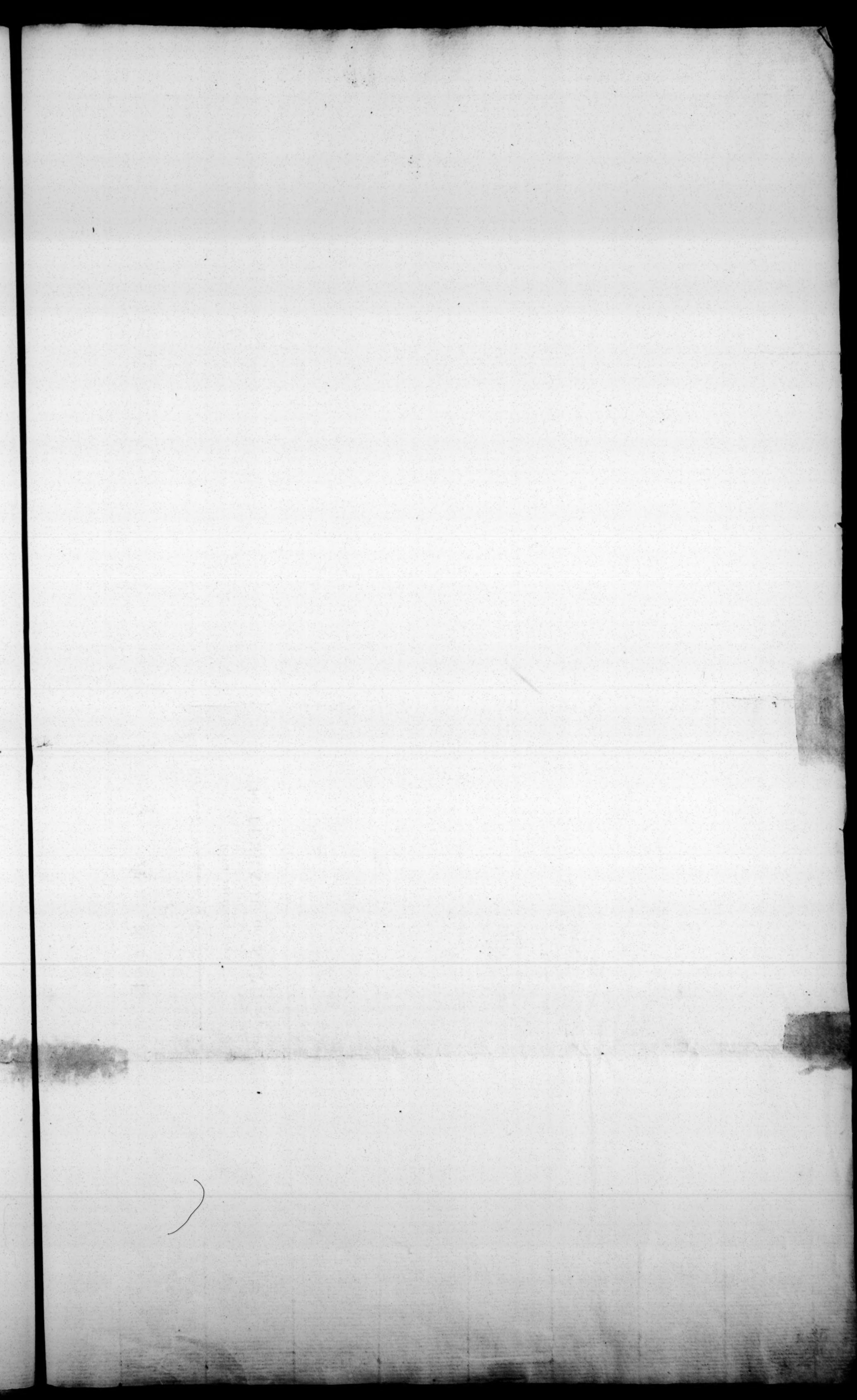
Upon this Charter the following Observations occur :

1<sup>st</sup>, The Charter as it stands in the Record is mutilated and defective—it is not a Copy of the Charter as passed, but an Escroll from whence a Charter was to be made out.

2<sup>d</sup>, To pave the Way for a new Grant of a Dignity, it was essential to resign it into the Sovereign's own Hands, which the Charter shews was not done in this Case.

3<sup>d</sup>, It is evident that this Charter was not intended nor relied upon to pass the Honour, because it is inconsistent with the regular Patent of the Honour, bearing the same Date, for which there was no Occasion, if the Charter had been reckoned sufficient, and to the same Effect.—The Resignation on which the Charter proceeded was made at *Edinburgh* in 1674 to the *Lords of the Treasury*, who had Power to receive Resignations, and make new Grants of Lands and Heritages, but who never had Power to receive Resignations, and make new Grants of Honours; and it was in favour of *Lord Napier's Heirs of Entail*.—The Resignation on which the new Patent 1677 proceeded, appears from the Terms of it to have been made *at the Time*, in the Hands of the Sovereign, and was in favour of *Lord Napier's Heirs whatsoever*, though his Majesty confined the Grant to Heirs of a certain Description.—After reciting the original Patent of 1627, as confining the Dignity to the Heirs Male of the Patentee's Body, it proceeds, “*Nos nihilominus ob causas prædict. firmiter determinati pro Regia nostra benignitate et respectu erga, prædict. familiam, prædict. honorem titulum et dignitatem, perpetuare ut in et cum ead. remaneat in persona prædict. Domini Napier, ejusq. hæredum talliæ et provisionis quivis hæredes Masculi de suo corpore desicerent, et ad hunc effectum ejus resignationem prædict. tituli in favorem sui ipsius ejusq. hæredum quorumcunque recipimus ideoque, &c.*”

JOHN SCOTT.  
T. ERSKINE.  
SYLV<sup>R</sup>. DOUGLAS.  
W. GRANT.



C A S E

O F

GEORGE Marquis of TWEEDDALE, &c,

WITH RELATION TO

The PEERAGE of NAPIER.



